

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 11-00901 WHA

Plaintiff,

v.

JARRETT PITTMAN-WRIGHT and  
DEVA HARRIS,

Defendants.

**ORDER DENYING MOTION  
TO DISMISS INDICTMENT,  
SUPPRESS EVIDENCE,  
AND COMPEL DISCOVERY**

**INTRODUCTION**

A defendant moves to dismiss the indictment, to suppress evidence, and to compel discovery. For the reasons stated below, the motion is **DENIED**. There is no need for an evidentiary hearing.

**STATEMENT**

On December 8, 2011, movant Jarrett Pittman-Wright and non-moving defendant Deva Harris were indicted and each charged with conspiracy to pass counterfeit obligations in violation of 18 U.S.C. 371 and a forfeiture allegation. The same indictment also charged movant Wright with manufacturing counterfeit obligations in violation of 18 U.S.C. 471, and three counts of passing of counterfeit obligations in violation of 18 U.S.C. 472 (Dkt. No. 1).

On May 3, 2010, movant was sentenced to five years of state probation. As part of the terms of his probation, he was subject to the following search condition: "Submit to search and seizure by any Probation Officer or any other law enforcement officer at any time of the day or

1 night with or without a search warrant, including: vehicle, residence, person or any other  
2 property under your control” (Def. Exh. A). On August 10, 2011, movant was arrested on  
3 allegations that he violated his state probation (Melton Exh. B). On January 11, 2012, movant,  
4 represented by Deputy Public Defender Charles Denton, admitted the probation violation and  
5 was sentenced to time served (Melton Exh. A at 1). Movant was scheduled to be released from  
6 state custody on January 11, 2012.

7 Instead, he was detained based on a federal arrest warrant based on the charges in this  
8 federal action (Ashley Decl. ¶ 8). On January 11, 2012, the government filed a petition for writ  
9 ad prosequendum and order requesting that movant be transferred into federal custody (Dkt. No.  
10 8). By order dated the same date, but filed on January 12, Magistrate Judge Jacqueline Scott  
11 Corley granted the writ ad prosequendum, to secure movant’s presence in the federal action  
12 (Dkt. No. 9). The government hand-delivered a copy of the writ ad prosequendum order to the  
13 United States Marshal’s office on January 12, and it was stamped as received by the Marshal’s  
14 office on the same day (Melton Exh. G). The Marshal’s office received a second copy of the  
15 writ ad prosequendum order on January 27 (Melton Exh. H). The government contends the first  
16 copy had been improperly routed (Opp. 12). Movant appeared before Magistrate Judge Corley  
17 on January 31, for his arraignment and initial appearance (Dkt. No. 10).

18 This order makes the following factual findings based on its review of all submissions  
19 made related to the motion to suppress. At issue in the motion to suppress is the search  
20 conducted on July 7, 2011, of a black backpack seated adjacent to movant at Straw Hat Pizza,  
21 and the search of movant’s residence, and Mr. Brandon Paris, movant’s roommate’s bedroom  
22 and personal computer within the residence, on August 4, 2011. The factual findings are based  
23 on the exhibits submitted into evidence by both parties.

24 **1. SEARCH OF BLACK BACKPACK.**

25 On July 7, 2011, public safety officer Tara Douglas was on patrol duty for the Rohnert  
26 Park Department of Public Safety. While at Rohnert Park Fire Station 2, she was contacted by  
27 Matthew Gray, an employee of the Straw Hat Pizza restaurant in Rohnert Park. She was  
28 acquainted with Mr. Gray because he was in the explorer program, a volunteer program for

1 youth interested in careers as police officers or firefighters. Mr. Gray informed Officer Douglas  
2 that a male customer had just attempted to make a purchase at the Straw Hat Pizza restaurant  
3 using a counterfeit bill. Officer Douglas immediately responded and arrived at Straw Hat Pizza  
4 at 7:14 p.m. Officer Douglas went inside the restaurant and spoke with the employee at the cash  
5 register, Yolanda Ramirez. Ms. Ramirez explained that a male customer had attempted to make  
6 a purchase at Straw Hat Pizza with a counterfeit bill. Ms. Ramirez did not accept the bill and  
7 returned it to the male, who then proceeded to pay with real currency. Ms. Ramirez pointed out  
8 the male suspect to Officer Douglas, who then went to make contact with the suspect. At the  
9 time, Officer Douglas was wearing a full Rohnert Park Department of Public Safety patrol  
10 uniform, which had badges identifying her as a law enforcement officer.

11 Officer Douglas asked the male suspect to identify himself. The suspect verbally  
12 identified himself as Jarrett Pittman-Wright. Officer Douglas asked movant for identification but  
13 movant claimed he did not have any. When Officer Douglas asked movant about the \$100 bill  
14 he attempted to pass at the cash register, movant claimed that his friend Don had owed him  
15 money and had given him the bill earlier in the day. At that same time, movant was holding his  
16 cell phone to his ear and claimed to be calling Don. Officer Douglas asked movant if he could  
17 see the \$100 bill. Movant took the \$100 bill out of his pants pocket and handed it to Officer  
18 Douglas, who observed the color and feel of the bill to be strange. While Officer Douglas was  
19 talking to movant, Sergeant James Brady arrived to assist.

20 Officer Douglas made further inquiries into movant's story about the origin of the \$100  
21 bill. She asked for "Don's" last name. Movant did not know and stated only that Don owed him  
22 money and that he did not know the bill was counterfeit at the time he tried to pass it. While  
23 movant was telling Officer Douglas this story, he was staring off into the restaurant. It appeared  
24 to Officer Douglas that movant's story lacked credibility and that he was making it up.

25 While talking to movant, Officer Douglas noticed that there was a black backpack sitting  
26 next to him on the booth. Officer Douglas stated in her declaration that she obtained movant's  
27 consent to search the black backpack. Movant stated in his declaration that Officer Douglas  
28 asked him and his companion who the bag belonged to and before movant was able to reply, she

1 picked the backpack up and started looking through it. The order makes no finding as to whether  
2 movant consented to the search of the black backpack.

3       Officer Douglas found a stack of \$100 bills when she opened the black backpack. The  
4 color of the bills seemed slightly off to her and the paper did not feel like the paper used for  
5 authentic United States currency. Officer Douglas observed movant acting nervous as she was  
6 searching the black backpack. Officer Douglas arrested movant, placed him in handcuffs,  
7 searched his person, and placed him in the back of the patrol vehicle. During the search of  
8 movant's person, Officer Douglas found three debit cards in the name of Deva Harris, his sister.  
9 Once movant was in the patrol vehicle, Officer Douglas went back inside the restaurant, leaving  
10 movant attended by Sergeant Brady. While Officer Douglas was inside the restaurant Sergeant  
11 Brady re-searched movant because he was exhibiting nervous behavior in the back of the patrol  
12 vehicle. When Officer Douglas returned to the patrol car, Sergeant Brady handed her an  
13 additional small stack of \$100 bills he found in movant's right shoe. Officer Douglas believed  
14 the bills to be counterfeit currency. Officer Douglas then compared the \$100 bills taken from the  
15 black backpack and movant's right shoe with the original \$100 bill movant attempted to pass to  
16 the Straw Hat Pizza restaurant and saw that the bills had the same serial number, CB40351475C  
17 on them. Officer Douglas read movant his Miranda rights prior to transporting him to the police  
18 station.

19       **2. SEARCH OF RESIDENCE.**

20       On August 4, 2011, United States Secret Service Special Agents Jeff Ashley, Matt  
21 Malone, Stephanie Henefeld, Tia Wuetrich, and Jace Alfiere conducted a search of the residence  
22 located at 1526 32nd Street, in Oakland. Senior Special Agent Bill Bishop and Oakland Police  
23 Officer Ryan Goodfellow were also present.

24       Prior to the search, Special Agent Ashley was assigned to investigate movant's use of  
25 counterfeit currency. He was the lead special agent on the case. On July 8, 2011, Special Agent  
26 Ashley conducted a search of the National Crime Information Center system to determine  
27 whether movant had a criminal history. The NCIC system search results indicated that movant  
28 was currently on probation for a felony conviction. That same day, Special Agent Ashley

1 contacted the Alameda County Probation Office to confirm that the NCIC system results were  
2 accurate and to determine whether movant's probation terms included a warrantless search  
3 provision. The Alameda County Probation Office duty officer confirmed that movant was on  
4 probation and subject to a warrantless search condition. At the request of Special Agent Ashley,  
5 the Alameda County Probation Office duty officer faxed Special Agent Ashley a copy of  
6 movant's Alameda County Superior Court judgment, which stated the specific terms of the  
7 probation search condition and the dates of movant's probationary period, which was May 3,  
8 2010 to May 3, 2015. Special Agent Alfieri also knew, prior to conducting the search, that  
9 movant was on probation with a warrantless search condition because Special Agent Ashley  
10 confirmed this information for him.

11 Special Agent Ashley reviewed the terms of the search provision and reviewed the  
12 judgment to determine where movant resided. The judgment indicated that movant lived at 1526  
13 32nd Street in Oakland. Special Agent Ashley also reviewed the July 7, 2011 Rohnert Park  
14 Department of Public Safety Incident Report to verify movant's address. The incident report  
15 listed 1526 32nd Street, Emeryville, California, as his address. (Emeryville and Oakland adjoin  
16 each other.) Special Agent Ashley then conducted an online search for both addresses and  
17 determined the area was on the border of Oakland and Emeryville and that the two addresses  
18 were, in fact, the same location.

19 On August 4, 2011, the search team met at the Oakland Police Department at 10:00 a.m.  
20 and proceeded to go directly to 1526 32nd Street. Officer Goodfellow and Special Agent Ashley  
21 knocked on the front door of the residence when the team arrived. No one answered. The entire  
22 search team waited outside the residence for approximately 10 to 20 minutes. Then, five  
23 members of the search team left to go to a second address where movant's girlfriend was  
24 believed to reside. Special Agents Wuetrich and Alfieri stayed behind across the street from  
25 1526 32nd Street in a car.

26 After approximately five to ten minutes of waiting outside the residence in their car, a  
27 dark BMW drove into the driveway of 1526 32nd Street, the garage door opened, and the car  
28 drove in. Special Agents Wuethrich and Alfieri approached the BMW inside the garage to make

1 contact with the driver, who was an African-American male. Special Agent Alfieri approached  
2 the driver's side of the vehicle. The driver opened the door. Special Agent Alfieri identified  
3 himself by stating "police," and asked the driver to show him his hands. At that point, Special  
4 Agent Alfieri had a weapon drawn for his safety. The driver showed his hands and exited the  
5 vehicle. Special Agent Alfieri asked the driver to identify himself. The driver verbally  
6 identified himself as Brandon Paris. Special Agent Alfieri confirmed his identify with his  
7 driver's license. After confirming Mr. Paris' identify, Special Agent Alfieri re-holstered his  
8 weapon. Mr. Paris informed the agents that he was a resident of 1526 32nd Street, and had  
9 resided there as movant's roommate for approximately two months. This order makes no finding  
10 as to whether Mr. Paris was handcuffed or pinned to the ground during this interaction with law  
11 enforcement.

12 Special Agent Wuethrich telephoned Senior Special Agent Bishop to inform him that  
13 movant's roommate had returned to the house. Special Agent Bishop responded that the search  
14 team would return to 1526 32nd Street.

15 Special Agent Alfieri informed Mr. Paris that his office was investigating movant for  
16 criminal activity. Mr. Paris confirmed that 1526 32nd Street was movant's residence, and that he  
17 rented a room from defendant and believed movant owned the entire house.

18 The rest of the team returned to 1526 32nd Street within five to ten minutes of receiving  
19 Special Agent Wuethrich's telephone call. Movant was with them. At this point, the search  
20 team, except for Special Agent Alfieri, entered the residence. Special Agent Alfieri informed  
21 Mr. Paris the officers were going to conduct a probation search of the residence. Special Agent  
22 Alfieri spoke with Mr. Paris in the garage for approximately 15 to 20 minutes to determine if he  
23 had knowledge of movant's counterfeiting activity. Mr. Paris had no such know knowledge.

24 Special Agent Alfieri asked Mr. Paris for permission to search his bedroom in the  
25 residence at 1526 32nd Street. Mr. Paris consented. This order makes no finding as to whether  
26 this consent was given voluntarily. Special Agents Alfieri and Bishop and Mr. Paris went  
27 upstairs to Mr. Paris' bedroom. Special Agent Bishop found a chemical stained baking pan in  
28 Mr. Paris' closet. Mr. Paris indicated to the agents that he had no idea how the pan got in his

1 closet and that he was being framed. Mr. Paris told the agents that he had a motion-activated  
2 camera in his bedroom and that he would show the agents the video to exonerate himself. Mr.  
3 Paris was in the bedroom for the duration of the search.

4 Mr. Paris operated the video while Special Agent Alfieri reviewed the footage over his  
5 shoulder. The video showed movant wearing the same clothes he was wearing the day of the  
6 search of the residence, placing the baking pan into Mr. Paris' closet and placing other items,  
7 including paper bearing counterfeit images in Mr. Paris' bedroom. The time stamps of the video  
8 footage showed that the footage was taken between 10:37 a.m. to 10:53 a.m. on August 4 (on the  
9 day of the search) — before law enforcement entered the residence to search it. Mr. Paris  
10 consented to allowing Special Agent Alfieri to operate the computer and review the video  
11 footage again. This order makes no finding as to whether the consent was voluntarily given. As  
12 Special Agent Alfieri reviewed the footage again, he directed Special Agent Bishop to where to  
13 search next for additional evidence based on where the video showed movant hid it. At 11:31  
14 a.m. Special Agent Ashley entered Mr. Paris' bedroom with a paper consent-to-search form. Mr.  
15 Paris signed the form, which explicitly stated that he gave his consent to a search of the  
16 residence and his personal computer. This order makes no finding as to whether this consent  
17 was given voluntarily. Mr. Paris then assisted Special Agent Alfieri in copying the video  
18 footage onto a CD.

## 19 ANALYSIS

### 20 1. NO NEED FOR AN EVIDENTIARY HEARING.

21 Defense counsel requests an evidentiary hearing, asserting that there are contested facts  
22 at issue. A district court “ordinarily is required [to hold an evidentiary hearing] if the moving  
23 papers are sufficiently definite, specific, detailed, and nonconjectural to enable the court to  
24 conclude that contested issues of fact going to the validity of the search are in issue.” *United*  
25 *States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986) (citation omitted).

26 Defense counsel argues that an evidentiary hearing is needed because there are contested  
27 issues of fact as to whether movant consented to the search of the black backpack seated next to  
28



1 him in the booth at Straw Hat Pizza and whether Mr. Paris voluntarily consented to the search of  
2 the residence at 1526 32nd Street, his bedroom in the residence, and his personal computer.

3 *First*, while there are dueling declarations on the issue of whether movant consented to  
4 the search of the black backpack at Straw Hat Pizza, resolution of the issue is not necessary  
5 because whether or not movant gave his consent, as is discussed below, Officer Douglas was  
6 entitled to search the black backpack as a search incident to lawful arrest.

7 *Second*, defense counsel argues, based on a declaration submitted by movant, that any  
8 consent Mr. Paris gave related to the search of the residence, his bedroom, and his personal  
9 computer on August 4, 2011, was given involuntary due to the alleged “coercive nature of his  
10 encounter with the agents,” when “the agents brandished their firearms” and “ordered Mr. Paris  
11 to raise his hands” (Reply Br. 8). The declaration submitted by movant states (Wright Decl. ¶ 8):

12 The agents apparently believed Mr. Paris was me. The agents  
13 pinned Mr. Paris on the ground and handcuffed him. After the  
14 agents checked Mr. Paris’ identification, they removed the  
handcuffs. Mr. Paris relayed these events to our other housemate  
who relayed them to me.

15 Furthermore, at the motion hearing, the Court inquired whether defense counsel  
16 attempted to obtain a declaration from Mr. Paris and whether he declined to provide a  
17 declaration. Defense counsel stated that his investigator had made diligent efforts to track down  
18 Mr. Paris but was unsuccessful. The Court would have been willing, out of an abundance of  
19 caution to subpoena Mr. Paris to testify at an evidentiary hearing as to the issue of consent —  
20 even though, it is not at all clear that such a hearing would be required based on the record in this  
21 case. However, even assuming movant’s above-stated offer of proof would be proven at the  
22 evidentiary hearing, it would be irrelevant to deciding the instant motion because as explained  
23 below movant does not have standing to raise a Fourth Amendment challenge to the search of  
24 Mr. Paris’ bedroom and his personal computer. Furthermore, whether or not Mr. Paris  
25 voluntarily consented to the search of other parts of the residence is irrelevant because this order  
26 concludes the search of the residence was a lawful probation search, thus, no consent was  
27 needed.  
28



1           There are no factual issues going to the validity of either search that need to be resolved  
2 in order to decide this motion. No evidentiary hearing is required.

3           **2.       RULE 5 PRESENTMENT REQUIREMENT.**

4           Movant seeks dismissal of the indictment on the ground that his delay in presentment to a  
5 federal magistrate judge by 20 days, at most, constituted an “egregious” violation of Federal  
6 Rule of Criminal Procedure 5 (Br. 9–10). Rule 5 requires that “[a] person making an arrest with  
7 the United States must take the defendant without unnecessary delay before a magistrate judge  
8 . . . unless a statute provides otherwise.” Movant was scheduled to be released from state  
9 custody on January 11 (Melton Exh. A at 1). Instead, he was detained and held at the Santa Rita  
10 County Jail based on a federal arrest warrant stemming from charges in this federal action.  
11 Movant first appeared before Magistrate Judge Corley on January 31, 2012, and was arraigned  
12 that day (Dkt. No. 10). The government submits that the reason for the 19-day delay was “an  
13 unfortunate paperwork routing mistake” (Opp. 12). Although the United States Attorney’s  
14 Office hand delivered a copy of the ordered writ ad prosequendum to the United States  
15 Marshal’s Office on January 12, 2012, the government stated in its opposition brief that “it  
16 appears that the order was not properly routed” (*ibid.*). There is no evidence in the record of  
17 this, except for the contention made in the opposition brief. It was not until the Marshal’s Office  
18 received a second copy of the ordered writ ad prosequendum on January 27, 2012, that movant  
19 was scheduled for an appearance before Magistrate Judge Corley.

20           Defense counsel’s theory in support of dismissal of the indictment is that movant was  
21 “effectively arrested” on January 11, “when he was held in state custody based on his federal  
22 arrest warrant,” and that the delay between January 11 and January 31, when he was presented to  
23 the magistrate judge violated Rule 5 (Br. 10). Defense counsel fails to address the motion to  
24 dismiss the indictment in his reply. Assuming the time movant was in state jail would count as a  
25 period of delay for purposes of the Rule 5 inquiry (even though movant states that he was in  
26 state, not federal custody), dismissal of the indictment is still not warranted here.

27           “[P]resentment is the point at which the judge is required to take several key steps to  
28 foreclose government overreaching: informing the defendant of the charges against him, his

1 right to remain silent, his right to counsel, the availability of bail, and any right to a preliminary  
2 hearing; giving the defendant a chance to consult with counsel; and deciding between detention  
3 or release.” *Corley v. United States*, 556 U.S. 303, 320 (2009). The typical remedy for violation  
4 of Rule 5 is suppression of any admission wrongfully obtained during the period of delay that  
5 caused movant not to timely receive an advisement of his rights. Here, there is no evidence  
6 anyone attempted to interview defendant or that any admissions were obtained during the 19-day  
7 period when he was held in the state jail. Movant claims no other harm aside from violation of  
8 Rule 5.

9 Our court of appeals has previously held that dismissal of the indictment was not required  
10 in a case where a defendant was held without presentment for four months, during which time he  
11 was interrogated by prison officials but where the government obtained no confessions or  
12 admissions from the defendant. *Bayless v. United States*, 381 F.2d 67, 70–71 (9th Cir. 1967);  
13 *see United States v. Savchenko*, 201 F.R.D. 503, 506 (S.D. Cal. 2011) (“The appropriate remedy  
14 for a violation of the ‘without unnecessary delay’ standard of Rule 5 is the suppression of any  
15 prejudicial statements provided by the accused during the subject period.”). Defense counsel  
16 cites to *United States v. Osunde*, in support of movant’s motion for dismissal, 638 F. Supp. 171  
17 (N.D. Cal. 1986). In *Osunde*, there was a 106-day presentment delay. The district court  
18 concluded that violations of the Speedy Trial Act and Rule 5 warranted dismissal of the  
19 indictment. *Osunde* is distinguishable from our case because the delay in presentment was  
20 significantly longer and because there was also a Speedy Trial Act violation. Dismissal of the  
21 indictment is not the appropriate remedy in this instance. The motion to dismiss the indictment  
22 is **DENIED**.

### 23 3. SUPPRESSION OF EVIDENCE.

24 Movant seeks to suppress the evidence obtained from the search of the black backpack at  
25 Straw Hat Pizza on July 7, 2011, and the evidence obtained from the search of the residence at  
26 1526 32nd Street, conducted on August 4, 2011, including the evidence obtained from the search  
27 of movant’s roommate’s bedroom and his personal computer that same day.  
28

**A. Black Backpack.**

Defense counsel moves to suppress all evidence obtained from the search of the black backpack on July 7, 2011. The government bears the burden of proving consent to a warrantless search. *United States v. Mendenhall*, 446 U.S. 544, 557 (1980). There is a factual dispute as to whether movant consented to a search of the black backpack that was adjacent to him in the booth at Straw Hat Pizza.

The government contends Officer Douglas was entitled to search the backpack as a search incident to a valid probable cause arrest, irrespective of whether movant consented to a search. An officer may conduct a warrantless arrest if the arrestee has committed an offense in the officer's presence, or if the officer has probable cause to believe that the arrestee has committed a felony. *Virginia v. Moore*, 553 U.S. 164, 175–78 (2008). Once there is probable cause for an arrest, which is not based on evidence obtained from the search in question, it is not important whether the search incident to arrest preceded or followed the arrest. *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980).

The government contends that Officer Douglas had probable cause to arrest movant for attempting to pass counterfeit currency, in violation of 18 U.S.C. 472, a felony. The order agrees. Probable cause to arrest exists when an officer has “knowledge or reasonably trustworthy information sufficient to lead a person of reasonable caution to believe that an offense has been or is being committed by the person being arrested.” *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007). To prove a violation of Section 472, the government must prove that movant passed or attempted to pass counterfeit currency. Probable cause to believe a currency is counterfeit can be demonstrated when the currency looks “odd” and “lack[s] many modern security features.” *Rodis v. San Francisco*, 558 F.3d 964, 971 (9th Cir. 2009). The government must also show movant had knowledge that the currency was counterfeit and had a specific intent to defraud. *Id.* at 969–70.

Previously, our court of appeals has stated that intent and knowledge may be inferred from the circumstances surrounding the events. *United States v. Lorenzo*, 570 F.2d 294, 299 (9th Cir. 1978). Even so, the court has not definitely resolved the issue of what evidence is required

1 to establish probable cause of intent to defraud for purposes of Section 472. Recently, in *Rodis*,  
2 a Section 1983 action, our court of appeals recognized that “[a]ll of the other circuits to have  
3 answered this questions . . . have found that ‘[t]he passing of a counterfeit note coupled with an  
4 identification of the person who passed the note furnishes probable cause to arrest the individual  
5 identified as passing the note.’” 558 F.3d 970. But because a decision on what level of evidence  
6 was required to determine whether there was probable cause to find intent to defraud was not  
7 necessary to the disposition of the action in *Rodis*, our court of appeals declined to answer the  
8 question.

9 In this case, the evidence shows that the arresting officer had probable cause to believe  
10 that movant attempted to pass a bill he knew to be counterfeit. Officer Douglas was informed by  
11 Matthew Gray, an employee of Straw Hat Pizza, who he knew through the explorer program,  
12 and Yolanda Ramirez, a cashier at Straw Hat Pizza, that a man attempted to pass a counterfeit  
13 bill (Douglas Decl. ¶¶ 2–4). Ms. Ramirez identified the man to Officer Douglas, who went up to  
14 the suspect while he was seated at a booth in the pizza restaurant. The man identified himself to  
15 Officer Douglas as Jarett Pittman-Wight, our movant (Douglas Decl. ¶ 6). Officer Douglas  
16 asked movant about the \$100 bill he tried to pass at the register and movant said his friend Don  
17 had given it to him earlier in the day. Movant could not remember Don’s last name when  
18 Officer Douglas asked him for it, and he was only able to provide a vague answer as to why Don  
19 owed him money. Movant also claimed he did not know the bill was counterfeit at the time he  
20 tried to pass it. Officer Douglas asked to see the bill and movant took it out of his pocket and  
21 handed it to her. Officer Douglas observed “the color on the bill appeared strange and the bill  
22 felt different from a regular bill” (Douglas Decl. ¶¶ 7–8; Melton Exh. C at JPW000027). While  
23 Officer Douglas was asking movant questions, he “was staring off across the restaurant and  
24 seemed distracted by his attempts to make a phone call” (Douglas Decl. ¶ 8). Movant has  
25 submitted a declaration regarding the events that took place at Straw Hat Pizza on the day in  
26 question. The declaration does not dispute any of the facts stated above.

27 Based on this evidence, there was probable cause to believe the bill was counterfeit and  
28 that movant attempted to pass it. Moreover, movant’s specific intent to defraud can be inferred

1 from the circumstances surrounding the event. Movant did not deny that the bill was counterfeit.  
2 He could not provide a clear explanation of where he obtained the bill. And movant appeared  
3 distracted when the officer was questioning him. Officer Douglas had probable cause to arrest  
4 movant prior to her search of the black backpack.

5 Because there was probable cause to arrest movant, Officer Douglas was entitled to  
6 search incident to arrest, the area within movant's immediate control to look for weapons or  
7 destructible evidence. To conduct a valid search incident to arrest, "the area searched must be  
8 that area under the arrestee's immediate control when he was arrested, and (2) events between  
9 the time of the arrest and search must not render the search unreasonable." *United States v.*  
10 *Nohara*, 3 F. 3d 1239, 1243 (9th Cir. 1993). The black backpack was seated next to movant on  
11 the bench where he was seated. Officer Douglas searched it "for officer safety" (Douglas Decl. ¶  
12 10). The backpack was searched immediately before movant was arrested, thus no delay passed  
13 that could render the search unreasonable. *Rawlings*, 448 U.S. at 111 (concluding "we do not  
14 believe it particularly important that the search preceded the arrest rather than vice versa").

15 Officer Douglas' search of the black backpack was a permissible search incident to  
16 arrest. As such, the order need not resolve the factual dispute as to whether movant consented to  
17 the search of the black backpack seated next to him in the booth at Straw Hat Pizza. Therefore,  
18 no evidentiary hearing is needed.

19 **B. Lawful Probation Search of Residence.**

20 The government contends that law enforcement's search of movant's residence on  
21 August 4, 2011, was a lawful probation search. The search was conducted without a warrant.  
22 Thus, the government bears the burden of establishing that a valid exception to the warrant  
23 requirement exists. Movant was subject to the following warrantless search condition: "Submit  
24 to search and seizure by any Probation Officer or any other law enforcement officer at any time  
25 of the day or night with or without a search warrant, including: vehicle, residence, person or any  
26 other property under your control" (Def. Exh. A at 1). Movant's five-year probation term  
27 commenced May 3, 2010.  
28

1 Movant challenges the validity of the probation search on the grounds that the officers  
2 did not have probable cause to believe that movant resided at the residence to be searched, that  
3 he was engaged in criminal activity, and that evidence of the alleged criminal activity would be  
4 discovered at the residence. Movant's argument fails in light of recent precedent in our court of  
5 appeals that a defendant who is subject to a warrantless search as a condition of probation may  
6 be subject to searches whether or not police suspect him of wrongdoing. *United States v. King*,  
7 672 F.3d 1133, 1339 (9th Cir. 2012). Furthermore, the officers had probable cause to believe the  
8 movant lived at the subject residence.

9 Prior to conducting a warrantless probation search, an officer must have probable cause  
10 to believe the probationer lives in the residence to be searched. *See United States v. Howard*,  
11 447 F.3d 1257, 1262 (9th Cir. 2006) ("[T]he facts known to the officers at the time of the search  
12 must have been sufficient to support a belief, in a [person] of reasonable caution," that the  
13 probationer lived at the residence searched").

14 The evidence demonstrates that the law enforcement officers executing the search had  
15 probable cause to believe that movant resided at 1526 32nd Street in Oakland. Movant's  
16 Alameda County Superior Court judgment entered on May 3, 2010, reflected that movant lived  
17 at that above-stated address (Ashley Decl. ¶ 4; Melton Exh. E). The Rohnert Park Department of  
18 Public Safety Incident Report regarding movant's July 2011 arrest, listed 1526 32nd Street as  
19 movant's address (Melton Exh. C at JPW-000026). Special Agent Ashley reviewed both of  
20 these documents prior to the search to determine movant's address (Ashley Decl. ¶¶ 4, 6).  
21 Furthermore, prior to the search, Mr. Paris, confirmed to Special Agent Alfieri that movant  
22 resided at the subject residence (Alfieri Decl. ¶ 14). Thus, prior to the search, there was  
23 probable cause to believe movant resided at 1526 32nd Street, and, indeed, he did (Wright Decl.  
24 ¶ 7).

25 Officers do not need reasonable suspicion to conduct a probation search for a person who  
26 is subject to a warrantless search as a condition of his probation. *King*, 672 F.3d 1139. In *King*,  
27 the defendant was subject to a warrantless search condition, with the following terms:  
28 "Defendant is subject to a warrantless search condition, as to defendant's person, property,

premises and vehicle, any time of the day or night, with or without probable cause.” *Id.* at 1136.

The Court reasoned:

[s]imply because a search may be conducted without probable cause does not mean that it must be conducted with reasonable suspicion. It would be unreasonable to read defendant’s probation condition as implicitly imposing a reasonable suspicion requirement. To the contrary, the plain import of defendant’s probation condition, allowing warrantless searches at any time, is that defendant may be searched whether or not police suspect him of wrongdoing.

*Id.* at 1139.

On July 8, 2011, prior to the search of the residence, Special Agent Ashley performed a search of the NCIC system and determined that movant was on probation for a felony conviction and called the Alameda County Probation Office to confirm (Ashley Decl. ¶ 2). Special Agent Ashley also inquired about whether movant was subject to a warrantless search condition and determined he was based on his review of movant’s Alameda County Superior Court judgment, which stated the specific terms of the warrantless search condition. The U.S. Secret Service Special Agents, including Special Agent Ashley, and the Oakland Police Officer conducted the probation search pursuant to the warrantless search condition of movant’s probation (Alfiere Decl. ¶¶ 1–5).

Based on the foregoing, this order concludes that the search of the residence was a lawful probation search.

**C. Mr. Paris’ Bedroom and Personal Computer.**

On August 4, 2011, law enforcement officers also conducted a search of Mr. Paris’ bedroom and his personal computer, located within the residence at 1526 32nd Street. Movant challenges the search of Mr. Paris’ bedroom and his personal computer on the basis that Mr. Paris’ consent to the search of his bedroom and his personal computer was involuntarily given. Movant challenges the search of the residence, generally, on the same ground, but because the order concludes that the search of the residence was a valid probation search, it need not address the issue of consent.

The government argues that movant does not have standing to challenge the validity of the search of Mr. Paris’ bedroom or personal computer because movant did not have an



1 expectation of privacy in Mr. Paris' bedroom or computer and therefore has no standing to  
2 challenge the searches. The order agrees.

3 "To contest the legality of a search under the Fourth Amendment, the defendant must  
4 demonstrate a legitimate expectation of privacy in the place or item searched by showing an  
5 actual subjective expectation of privacy which society is prepared to recognize." *United States*  
6 *v. Davis*, 932 F.2d 752, 756 (9th Cir. 1991). In support of his assertion that movant has standing  
7 to challenge the searches at issue here, defense counsel argues in the reply brief that, "Mr.  
8 Wright did possess a reasonable expectation of privacy in the residence as a whole as it was Mr.  
9 Wright's house and Mr. Paris only rented one room therein. Also, the agents had to pass through  
10 common areas in which Mr. Wright reasonably expected privacy" (Reply Br. 9). Defense  
11 counsel appended a reply declaration of movant stating that he sublet one bedroom to Mr. Paris.  
12 No more is said in support of establishing standing to challenge the search of Mr. Paris' bedroom  
13 and his personal computer.

14 Movant has not claimed any shared use or control of Mr. Paris' bedroom or his personal  
15 computer. Movant has not claimed that he stored items in Mr. Paris' bedroom or on Mr. Paris'  
16 personal computer. Despite the fact that movant put forward two declarations, one submitted in  
17 support of the motion and the other submitted as a reply declaration, movant has not created a  
18 record to show that he had an "actual subjective expectation of privacy" in Mr. Paris' bedroom  
19 or in his personal computer. Movant bears the burden of establishing standing to contest the  
20 legality of the search. He has failed to meet his burden. And Mr. Paris has not challenged the  
21 search of his bedroom or of his personal computer.

22 **D. Suppression is not Warranted.**

23 Evidence seized as a result of an illegal search or seizure is the "fruit of the poisonous  
24 tree" and should be excluded. *Wong Sun v. United States*, 371 U.S. 471, 484–85, 488 (1963).  
25 Because the search of the black backpack and defendant's residence was lawful, suppression is  
26 not warranted here. Furthermore, based on the instant motion and record, there is no basis to  
27 suppress the evidence obtained from the search of Mr. Paris' bedroom or of his personal  
28 computer. Thus, the motion to suppress is **DENIED**.

